

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
JOHN CHING EN LEE,
Defendant.

Case No. [15-cr-00541-SI-1](#)

ORDER RE: JURY INSTRUCTIONS

The parties have each filed proposed jury instructions. Docket Nos. 96, 100, 106. Pursuant to the Court's final pretrial scheduling order, the parties have also filed joint preliminary jury instructions and objections to each other's proposed jury instructions. Docket Nos. 107, 110, 111. The Court hereby rules as follows as to the instructions:

No.	9th Cir. Model No.	Title	Agreed/ Disputed By	Given/ Not Given
PRELIMINARY INSTRUCTIONS				
Joint 1	1.1	Duty of Jury	Parties agree	Given
Joint 2	1.2 (with modifications)	The Charge - Presumption of Innocence	Parties agree	Given
Joint 3	1.3	What is Evidence	Parties agree	Given
Joint 4	1.4	What is Not Evidence	Parties agree	Given
Joint 5	1.5	Direct and Circumstantial Evidence	Parties agree	Given
Joint 6	1.6	Ruling on Objections	Parties agree	Given
Joint 7	1.7	Credibility of Witnesses	Parties agree	Given

1	Joint 8	1.8	Conduct of the Jury	Parties agree	Given
2	Joint 9	1.9	No Transcript Available to Jury	Parties agree	Given
3	Joint 10	1.10	Taking Notes	Parties agree	Given
4	Joint 11	1.11 (with modifications)	Outline of Trial	Parties agree	Given
5					
6	Joint 12	1.12 (with modifications)	Jury to Be Guided by Official English	Parties agree	Given
7			Translation		
8	Joint 13	N/A	Federal Agent's Testimony	Govt objects	Not Given
9	INSTRUCTIONS IN THE COURSE OF TRIAL				
10	Joint 14	2.1	Cautionary Instruction - First Recess	Parties agree	Given
11	Joint 15	2.2	Bench Conferences and Recesses	Parties agree	Given
12	Joint 16	2.4	Stipulations of Fact	Parties agree	Given
13	Joint 17	2.9	Foreign Language Testimony (if necessary)	Parties agree	Given, if necessary
14					
15	INSTRUCTIONS AT END OF CASE				
16	Govt 15, Def 18 ¹	3.1	Duties of Jury to Find Facts and Follow Law	Parties agree	Given
17					
18	Govt 16, Def 19	3.2 (with modifications)	Charge Against Defendant Not Evidence - Presumption of Innocence - Burden of Proof	Parties agree	Given
19					
20					
21	Govt 17, Def 20	3.3	Defendant's Decision Not to Testify (if necessary)	Parties agree	Given, if necessary
22					
23	Govt 18, Def 21	3.4	Defendant's Decision to Testify (if necessary)	Parties agree	Given, if necessary
24					
25					

¹ References to defendant's jury instructions are to the revised instructions filed June 17, 2016. *See* Docket No. 106.

1	Govt 19, Def 22	3.5	Reasonable Doubt - Defined	Parties agree	Given
2					
3	Govt 20, Def 23	3.6	What is Evidence	Parties agree	Given
4					
5	Govt 21, Def 24	3.7	What is Not Evidence	Parties agree	Given
6					
7	Govt 22, Def 25	3.8	Direct and Circumstantial Evidence	Parties agree	Given
8					
9	Govt 23, Def 26	3.9	Credibility of Witnesses	Parties agree	Given
10					
11	Def 27	N/A	Federal Agent Testimony	Govt objects	Not Given
12	Govt 24, Def 28	3.10 (with modifications)	Activities Not Charged	Parties agree	Given
13					
14	Govt 25, Def 29	3.11	Separate Consideration of Multiple Counts - Single Defendant	Parties agree	Given
15					
16	Def 30	3.19	Jury to Be Guided by Official English Translation (if necessary)	Parties agree	Given, if necessary
17					
18	CONSIDERATION OF PARTICULAR EVIDENCE				
19	Govt 26, Def 31	4.1	Statements by Defendant	Parties agree	Given
20					
21	Govt 27	4.6	Impeachment, Prior Conviction of Defendant (if necessary)	Govt requested	Given, if necessary
22					
23	Govt 28	4.8	Impeachment Evidence - Witness (if necessary)	Govt requested	Given, if necessary
24					
25					
26	Govt 29	4.15	Summaries Not Received in Evidence (if necessary)	Govt requested	Given, if necessary
27					
28					

1	Govt 30	4.16	Charts and Summaries in Evidence (if necessary)	Govt requested	Given, if necessary
2					
3	SPECIFIC DEFENSES				
4	Def 32	N/A	Good Faith Defense	Govt objects	Not Given
5	JURY DELIBERATIONS				
6	Govt 34,	7.1	Duty to Deliberate	Parties agree	Given
7	Def 33				
8	Govt 35,	7.2	Consideration of Evidence	Parties agree	Given
9	Def 34				
10	Govt 36,	7.3	Use of Notes	Parties agree	Given
11	Def 35				
12	Govt 37	7.4	Jury Consideration of Punishment	Govt requested	Given
13					
14	Govt 38,	7.5	Verdict Form	Parties agree	Given
15	Def 36				
16	Govt 39,	7.6	Communication with Court	Parties agree	Given
17	Def 37				
18	OFFENSES UNDER TITLE 18				
19	Govt 31	8.73 (with modifications)	False Statement to Government Agency	Def objects	See Court Instruction, infra
20					
21					
22	Def 38	8.73 (with modifications)	Making a False Statement to Government Agency - Count 1	Govt objects	See Court Instruction, infra
23					
24					
25	Def 39	8.73 (with modifications)	Making a False Statement to Government Agency - Count 2	Govt objects	See Court Instruction, infra
26					
27					
28					

Govt 32	3.20	On or About - Defined	Govt requested	Given
Govt 33	5.6	Knowingly - Defined	Govt requested	Given
MISCELLANEOUS				
Def 40	N/A	Power of the Jury	Govt objects	Not Given

Jury instructions as to the offense of Making a False Statement to a Government Agency shall read as follows:

**FALSE STATEMENT TO
GOVERNMENT AGENCY
(18 U.S.C. § 1001) – Count One**

Mr. Lee is charged in Count One with knowingly and willfully making a false statement on or about August 26, 2009, in a matter within the jurisdiction of a governmental agency or department, the Department of Homeland Security, in violation of Section 1001 of Title 18 of the United States Code. In order for Mr. Lee to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, Mr. Lee made a false statement in a matter within the jurisdiction of the Department of Homeland Security;

Second, Mr. Lee acted willfully; that is, Mr. Lee acted deliberately and with knowledge both that the statement was untrue and that his conduct was unlawful; and

Third, the statement was material to the activities or decisions of the Department of Homeland Security; that is, it had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities.

The statement charged in Count One is that Mr. Lee stated:

[LIST STATEMENTS INTRODUCED AT TRIAL]

**FALSE STATEMENT TO
GOVERNMENT AGENCY
(18 U.S.C. § 1001) – Count Two**

Mr. Lee is charged in Count Two with knowingly and willfully making a false statement on or about October 10, 2013, in a matter within the jurisdiction of a governmental agency or department, the Department of Homeland Security, in violation of Section 1001 of Title 18 of the United States Code. In order for Mr. Lee to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, Mr. Lee made a false statement in a matter within the jurisdiction of the Department of Homeland Security;

Second, Mr. Lee acted willfully; that is, Mr. Lee acted deliberately and with knowledge both that the statement was untrue and that his conduct was unlawful; and

Third, the statement was material to the activities or decisions of the Department of Homeland Security; that is, it had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities.

The statement charged in Count Two is that Mr. Lee stated:

[LIST STATEMENTS INTRODUCED AT TRIAL]

If the government charges more than one false statement in either Count One or Count Two, the Court will give a specific unanimity instruction. If the government charges one statement in each count, the Court finds that no separate unanimity instruction will be required.

The Court also notes that the government is incorrect that “the defendant adds the requirement that the defendant knew ‘that his conduct was unlawful.’” *See* Docket No. 110 at 4. This language appears in the Ninth Circuit Model Criminal Instruction 8.73 and is explained by the comment citing *Ajoku v. United States*, 134 S. Ct. 1872 (Mem.) (2014). The government included this same requirement in its own proposed jury instruction number 31. *See* Docket No. 100 at 36-37. The Court therefore retains this language in the jury instruction.

IT IS SO ORDERED.

Dated: June 22, 2016



SUSAN ILLSTON
United States District Judge